IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1208 of 1991

For Approval and Signature:

Hon'ble MR.JUSTICE K.A.PUJ

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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M D BANSIVAL

Versus

DEPUTY INSPECTOR GENERAL OF POLICE

Appearance:
MR. S.B. Bundala, for Mr. HARIN P RAVAL
for Petitioner.
Mr. B.Y. Mankad, AGP for Respondents No. 1 & 3.
Notice served on Respondents No. 2 & 4.

CORAM : MR.JUSTICE K.A.PUJ

Date of decision: 12/04/2002

ORAL JUDGEMENT

The petitioner, in this petition under Article 226 of the Constitution of India, has challenged the validity and legality of the order passed by the respondents on 7.12.1990 preventing the petitioner from crossing Efficiency Bar which he was due to cross on 1.12.1989. The petitioner has further challenged the legality and validity of the rejection of the

representation made by the petitioner against the adverse remarks made in the Confidential Report of the petitioner. The petitioner has also prayed for issuance of the directions to the respondents for consideration of his case for promotion along with all other similarly situated persons.

2. By way of an interim relief, the petitioners have prayed that the promotion list should not be finalised without considering the petitioner's case, during the pendency of this petition. Initially, ad-interim relief was granted by this Court restraining the respondents from finalising the list of promottees for the post of Dy.S.P. till then. Thereafter, on 9.3.1992, this Court (Coram: C.K. Thakkar) passed the following order :

"Rule. Expedited.

In the facts and circumstances of the case, however, ad.interim relief keeping one post vacant is vacated and appointment to the said post would be subject to the result of this petition. The learned counsel for the respondents stated that the case of the petitioner is considered for the promotional post of Dy.S.P. and sealed envelope procedure has been followed. In view of the pendency of the Departmental inquiries the envelope has not been opened. The respondent-authorities are directed to complete the inquiry as expeditiously as possible and if the petitioner is exonerated in those inquiries, and if he is found fit, the above order will not come in the way of the petitioner in getting promotion to the post of Dy.S.P. D.S."

3. The respondents have filed their affidavit-in-reply on 13.7.2000, wherein it was inter alia submitted that the performance of the petitioner was not found to be satisfactory and hence it was not proper to allow the petitioner to cross the efficiency bar. It was further submitted that the petitioner has not made any representation in connection with the decision taken by D.G.P. with regard to stopping of the efficiency bar. It was also submitted that with regard to the promotion to the post of Armed D.S.P., the case of the petitioner was placed before the D.P.C. which met on 8.11.1990, for preparing the select list for promotion to the post of Armed D.S.P. and at that time the petitioner was facing grave departmental inquiry and hence the D.P.C. came to

the conclusion to keep its recommendation in sealed cover in respect of the petitioner. It is further submitted in the said affidavit that out of the two inquiries against the petitioner in one inquiry, the petitioner was served with a chargesheet and departmental proceedings were initiated and upon the said departmental proceedings, the charges levelled against the petitioner were proved and inquiry papers were sent to D.I.G.P., Armed Unit. It is further submitted that the sealed cover procedure adopted by the respondents was in consonance with the Government Resolutions dated 23.9.1981.

4. The petitioner, in his affidavit-in-rejoinder filed on 3rd April 2002, inter alia, raised the contention that by order dated 13th April 1992, the petitioner was permitted to cross Efficiency Bar with effect from 1.12.1990 and that consequent to the said order, the petitioner was granted the benefit by order dated 4.5.1992 passed by the Commissioner of the State Reserve Police Force, Group 12, Gandhinagar. The petitioner has further pointed out in the affidavit-in-rejoinder that with respect to the inquiry against the petitioner between the period from 18.8.1986 to 23.8.1988 and pursuant to show cause notice dated 31.1.1992 issued by the respondent, the petitioner submitted his reply to the said show cause notice on 21.2.92 and thereafter the penalty was modified to a large extent and the only penalty imposed was that one future increment was stopped for a period of 2 months. This order was passed by the respondent on 7-4-1992 and it is placed on record at Annexure III to the affidavit-in-rejoinder.

5. The petitioner has further submitted in his affidavit-in-rejoinder that with regard to the second inquiry, by an order dated 19.10.92 the petitioner was only reprimanded. The said order is placed on record at Annexure IV to the affidavit-in-rejoinder. The petitioner has further submitted in the affidavit-in-rejoinder that he has made thereafter a representation on 28.4.1992 to the respondent No.1, inter alia, pointing out that he was entitled to be promoted to the post of Dy. Superintendent of Police. Since the petitioner's representation was not considered, he has again made representation on 14.10.1992 wherein it was pointed out that no departmental inquiry was pending and that he was permitted to cross Efficiency Bar and that his request for grant of promotion to the post of Dy. Superintendent of Police should be considered. The petitioner has also raised the grievance that in the affidavit-in-reply filed by the respondent before this

Court on 13th January 2000 there was no whisper as to what decision was taken on two of the representations made by the petitioner after he was exonerated in 1992 in one of the inquiries and after the proceedings were terminated. The petitioner has further stated that during the period from 1990 to 2001, the Annual Confidential Reports of the petitioner were good and no adverse remarks were communicated to him.

6. The petitioner has also raised the grievance in the affidavit-in-rejoinder that in the year 2000, the DPC was met and again the petitioner was superceded and four Police Inspectors were granted promotion. The petitioner has also contended that against these persons serious allegations were made and proceedings were pending and yet they were granted promotions. Thus, according to the petitioner, on the one hand the petitioner's case was not considered on the ground that in 1999 the departmental proceedings were pending, and on the other hand, in the case of one of those four persons who were promoted, a corruption case was pending and yet he was granted promotion on ad-hoc basis for Dy. Superintendent of Police. The petitioner has further pointed out that with regard to the departmental inquiry of the year 1999, for which the petitioner was issued show cause notice dated 28.4.1999 and to which the petitioner had given reply on 24.5.99, a final order was passed by the respondent No.1 under which, punishment was made to reduce one increment from the basic pay for a period of 2 years. The petitioner has further stated in the affidavit-in-rejoinder that against the said order, the petitioner had approached the appropriate authority by way of an appeal and the said appeal was allowed to a large extent and the penalty was reduced to the extent of reprimanding the petitioner instead of reducing the increment from the basic pay for a period of two years.

7. The petitioner has further stated in the affidavit-in-reply that even with regard to the inquiry started in the year 1998, he was fully exonerated and again papers were forwarded to the appropriate authority for decision in January 2002. The petitioner has lastly submitted that even at the time of consideration for promotion when the DPC met in 2000, his name was put in sealed cover and though he was fit to be promoted, the sealed cover was not opened and since the DPC is likely to meet in 2002 and since no adverse remark was communicated to him in 1990 till 2001 the petitioner's case could be considered for promotion.

8. After hearing Mr. S.B. Bundala, ld. advocate

appearing for the petitioner as well as Mr. Mankad, ld. A.G.P., and after perusing the records and proceedings as well as the pleadings of the parties, I am of the view that the sealed cover procedure adopted earlier may be taken on hand and the said sealed covery may be opened and considering the recommendations made therein as well as the subsequent service record of the petitioner and the different orders passed in the case of the petitioner from time to time, if the petitioner is found to be fit for the promotion, the said promotion should be given to the petitioner. I further direct the respondent authorities that while considering the petitioner's case for promotion, the departmental proceedings initiated and concluded against the petitioner should be viewed in the light of the final order passed by the appropriate authorities.

9. With these directions, the petition is disposed of accordingly. The petition is partly allowed. Rule is made absolute to the above extent with no order as to costs. In case of any difficulty, the petitioner is given liberty to revive this petition.

rmr. [K.A. Puj, J.]